

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

RAY ANTHONY SHORTER, SR.,

Plaintiff,

v.

CIVIL ACTION NO. 1:09CV59
(Judge Keeley)

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

ORDER ADOPTING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION

Pursuant to 28 U.S.C. §636(b)(1)(B), Rule 72(b), Federal Rules of Civil Procedure and Local Court Rule 4.01(d), on May 7, 2009, the Court referred this Social Security action to United States Magistrate Judge James E. Seibert with directions to submit proposed findings of fact and a recommendation for disposition.

On November 6, 2009, Magistrate Judge Seibert filed his Report and Recommendation ("R&R"), and directed the parties, in accordance with 28 U.S.C. §636(b)(1) and Fed. R. Civ. P. 6(e), to file with the Clerk of Court any written objections within ten (10) days after being served with a copy of the R&R. The R&R also advised the parties that failure to file objections would result in a waiver of their right to appeal from the judgment of this Court. The parties did not file any objections.

In his R&R, Magistrate Judge Seibert noted that:

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1. On September 29, 2009, the Court issued a notice to plaintiff regarding the need to file a brief in support of his claim for relief within thirty days;

2. On October 21, 2009, the United States Postal Service ("USPS") returned that notice marked "Return to Sender; Unclaimed; Unable to Forward";

3. When attempting to deliver certified mail, the USPS leaves notice at the address of the recipient that it is holding certified mail, and leaves a second notice if the recipient fails to claim the mail within five days;

4. After two weeks, if the recipient has not retrieved the mail, the USPS returns the mail to the sender marked "Return to Sender; Unclaimed; Unable to Forward";

5. The USPS uses the "Unable to Forward" designation when a recipient has moved and failed to provide a forwarding address; and

6. On May 7, 2009, the Clerk sent the plaintiff a "Notice of General Guidelines for Appearing Pro Se in Federal Court" that included the following specific instruction:

Current Address: Keep the court and opposing counsel, if any, advised of your most current address **at all times**. Failure to do so may result in your action being dismissed without prejudice.

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In Cook v. Rubenstein, 2009 WL 667179, at *14 (N.D.W. Va. 2009), the court concluded that

[ordinarily, when a plaintiff fails to notify the court of a change of address, the matter is dismissed without prejudice. However, in this case, the undersigned is of the opinion that the plaintiff has done more than failed to notify the court of his change of address. He has essentially abandoned his claim.

In his R&R, Magistrate Judge Seibert determined that, here, as in Cook, when the plaintiff failed to provide the Court with a current address, he "essentially abandoned his claim." Thus, Magistrate Judge Seibert recommended that this action be dismissed without prejudice and stricken from the docket.

Upon consideration of Magistrate Judge Seibert's recommendation, and having received no written objections from the parties,¹ the Court accepts and approves the R&R and **ORDERS** that this civil action be disposed of in accordance with the recommendation of the magistrate judge. Accordingly, the Court

¹ Shorter's failure to object to the Report and Recommendation not only waives his appellate rights in this matter, but also relieves the Court of any obligation to conduct a *de novo* review of the issues presented. See Wells v. Shriners Hospital, 109 F.3d 198, 199-200 (4th Cir. 1997); Thomas v. Arn, 474 U.S. 140, 148-153 (1985).

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DISMISSES this civil action **WITHOUT PREJUDICE** and **ORDERS** that it be stricken from the docket of this Court.

Pursuant to Fed.R.Civ.P. 58, the Court directs the Clerk of Court to enter a separate judgment order and to transmit copies of this Order to counsel of record.

DATED: January 6, 2010.

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE